

**12 October 2020**

- To:** Kholiswa Pasiya-Mndende  
Committee secretariat of Human Settlements, Water and Sanitation Portfolio Committee  
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Dear Honourable Chairperson and Members,

**RE: INDEPENDENT WATER REGULATOR FOR SOUTH AFRICA**

1. The Organisation Undoing Tax Abuse, known as OUTA, is a Non-Profit Company incorporated in terms of the Companies Act, 2008, and has been approved as a public benefit organisation in terms of the Income Tax Act, 1972.
2. OUTA is funded by ordinary South Africans, as well as small and medium-sized local businesses who believe in and support its civil activism. Our supporters are aligned with OUTA's vision of an engaged and empowered civil society that ensures the responsible use of tax revenues throughout all levels of government.
3. OUTA's core aim is to ensure that tax revenue is spent in a frugal and lawful manner to advance the prosperity of our nation. OUTA's main objective is to promote public accountability, transparency, and good public governance. This mandate requires OUTA to investigate and challenge alleged corruption and other acts of poor governance.
4. In order to advance our democracy and improve good public governance, OUTA developed the capacity to critically and constructively analyse policy and to participate in policy formulation and parliamentary engagement through extant and new public participation opportunities.
5. OUTA and Water Shortage South Africa are of the view that the national water crisis, which is characterised by 1) failing municipal infrastructure, 2) a lack of long-term planning and implementation, 3) the growing failure of sewage treatment plants across the country, and 4) the lack of accountability, constitutes a powerful case for an Independent Water Regulator (IWR).

6. It had become clear that the former Department of Water and Sanitation (DWS) could not be both player and referee. It has failed in its duty of care by ignoring the municipal infrastructure catastrophe and hiding behind the Cooperative Governance clause of the Constitution – which provides that one sphere of government cannot interfere in the affairs and operations of another.
7. It is our view that, had there been an IWR freed of this constraint, effective intervention into municipal affairs would have occurred long before municipalities started to fail in their Constitutional mandate to provide adequate drinking water and sanitation to communities.
8. National and Provincial Government seem to confuse intervention in terms of their oversight duty, such as issuing directives and initiating criminal proceedings against wrongdoers under their purview, with the principle of avoiding legal proceedings in terms of cooperative governance.
9. It could never have been the intention of the Legislature to prevent an oversight body from exercising its duty by barring legal action. Rather, OUTA supports the principle that intergovernmental litigation should not be abused and thus waste tax revenue.
10. An IWR, as we intend to propose it to the Committee, would treat criminal conduct without fear or favour. Gross negligence, such as pollution of our scarce resources, should result in serious consequences for polluters as well as those government officials under whose watch such negligence takes place without requisite disciplinary proceedings.
11. The concept of an IWR has been widely workshopped – including the National Water Security Framework Workshop held at the Union Buildings on 24 June 2019 - and has been generally supported, with some notable exceptions.
12. In most cases the exceptions come from affected parties that directly benefit from the status quo and foresee a loss of future revenues once an independent regulatory authority is established.
13. The National Water Security Framework has now included the notion of an IWR (pages 37, 53, 56, 92, 105 and 110 of the document <https://www.nationalplanningcommission.org.za/assets/Documents/Frameworks/NWS%20Framework%20Public%20Version%200.0%2011%2006%202019.pdf> ).
14. The National Planning Commission (NPC) has been an enthusiastic supporter of the IWR. The NPC Framework informs the Draft National Water & Sanitation Master Plan. Page 44 refers to “Consider establishing an economic regulator for water, independent from the department” (see [http://www.dwa.gov.za/National%20Water%20and%20Sanitation%20Master%20Plan/Documents/NWSMP\\_Schedule%20of%20Action\\_Reduced.pdf](http://www.dwa.gov.za/National%20Water%20and%20Sanitation%20Master%20Plan/Documents/NWSMP_Schedule%20of%20Action_Reduced.pdf) )
15. National Treasury has also adopted the concept of an IWR (pages 26-27 of the document [http://www.treasury.gov.za/comm\\_media/press/2019/Towards%20an%20Economic%20Strategy%20for%20SA.pdf](http://www.treasury.gov.za/comm_media/press/2019/Towards%20an%20Economic%20Strategy%20for%20SA.pdf) ).

16. Significant progress has been made. Both OUTA and Water Shortage South Africa would like to propose the creation of an IWR by means of an inclusive Parliamentary policymaking process.
17. Both OUTA and Water Shortage South Africa believes that the 6<sup>th</sup> Parliament's Committee on Human Settlements and Water and Sanitation is the correct vehicle to establish this much needed entity. It is our humble view that your indulgence will have a remarkably positive impact on the future of South African livelihoods – especially that of poor and vulnerable communities.
18. We therefore would like to engage with the Committee to present our findings and suggestions.
19. We eagerly look forward to your response.

Kind regards,



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